IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 64 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISAMAIL ADAM MITHA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AD SHAH for Appellant(s) : 1,MR RAMNANDAN SINGH for Appellant(s) : 1,
MS DS PANDIT APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 01/08/2007

ORAL JUDGMENT

1. Heard Mr. Ramanandan Singh, learned advocate for appellant and Ms. D.S. Pandit, learned A.P.P. for the State.

2. Present appeal is arising out of the judgment and order of conviction and sentence dated 21.1.2006 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.97 of 1996, whereby the learned Sessions Judge held the appellant (original accused) guilty for the charge of the offence punishable under Section – 4 (b) of the Explosive Substances Act, 1908 and sentenced the appellant to suffer R.I. for five years and to pay the fine of Rs.10,000/-, in default, further simple imprisonment of six months.

3. Initially the appellant was charged to face the trial for the offence punishable under Section 25 (1-b) (a) and 27 of the Arms Act and also under Section 4 (b) of the Explosive Substances Act. However, the learned trial Judge decided to acquit the appellant from the charge of offence punishable under the Section 25 (1-b) (a) and 27 of the Arms Act saying that formal sanction was not obtained from the competent authority. However, the appellant was held guilty for the charge of offence punishable under Section 4 (b) of the Explosive Substances Act.

4. Of course, the learned advocate Mr. Ramanandan Singh for the applicant has concentrated his arguments on one point that the learned trail Judge perhaps has not considered the provisions of Section 7 of the Explosive Substances Act. It is very likely that the learned trial Judge

neither could get proper assistance from the learned Public Prosecutor appearing in the appeal nor pointed questions were placed in this regard to the officer, who investigated the crime and chargesheeted the appellant. Mr. Singh, learned advocate, has relied upon Section 7 of Explosive Substances Act, 1908 which reads as under :

> " **Section – 7 : Restriction on trial of offences** :
>
> No Court shall proceed to the trial of any person for an offence against this Act except with the consent of Central Government."

5. According to Mr. Singh, learned advocate, the trial Court ought not to have proceeded with the trial at all, as there was no formal sanction from the Central Government meaning thereby, the competent authority has not accorded permission for trial under the Explosive Substances Act. So, this is not a case of illegality and invalidity of the sanction, but it is the case of absence of sanction or necessary permission from the Central Government. When the trial Judge has decided to acquit the appellant from the charge of offence punishable under the Arms Act, the learned trial judge could have acquitted the accused under Explosive Substances Act for want of necessary permission, which is required to be obtained under the Section 7 of the Explosive Substances Act.

6. In response to querry raised by the Court, it is submitted by the learned A.P.P. that the documentary evidence led before the trial Court, does not appear in order of sanction/permission to prosecute the appellant – accused as contemplated under Section 7 of the Act. This submission itself is capable of raising a very valid point. Of course, this point was perhaps not taken before the learned trial Court, therefore, now this Court should decide whether such plea can be permitted to be taken before this Court or this point was required to be raised earlier at lower stage at the time of trial, is a question. Whether the say of learned A.P.P. should be given any weightage that such appeal ought to have been taken at initial stage of the trial.

7. I do not find any merit in the point raised by the learned A.P.P.. On the contrary, there is no enough force in the say of Mr. Ramanandan Singh, learned advocate for the appellant – accused. The appeal provided under the Code of Criminal Procedure is a statutory privilege of the accused, if the accused find that he was wrongly tried and also has been convicted, then he can agitate all legal and factual points before the Appellate Court including the authority to proceed with the trial for want of sanction required under Section 7 of the Act. He could have raised this point before the trial Court, but it cannot be prevented from raising the very point before the Appellate Court. When the learned trial Judge has

kept in the mind that same previous sanction is required to prosecute the accused for the offence punishable under the Arms Act then why the provisions of Section 7 of the Explosive Substances Act has been ignored or it went out of the mind of the learned trail Judge and so also the Public Prosecutor, who was supposed to point out this aspect, is a question which remains unanswered. According to me the conviction of the accused under Explosive Substances Act is bad for the want of sanction under Section 7 of the said Act. In short, without entering into merits and without dealing with other factual aspects, the present appeal is required to be allowed and therefore, same is allowed.

8. In view of reasons stated above, the present appeal No. 64 of 2000 is allowed. The judgment and order dated 21.1.2000 rendered by the learned Additional Sessions Judge, Bharuch, in Sessions Case No.97 of 1996 is quashed and set aside. The appellant is ordered to be acquitted from the charges levelled against him in respect of the offence in question. The appellant is ordered to be set at liberty forthwith, if not required in any other case. Fine, if paid by the appellant, is ordered to be refunded to him on proper identification. Bail bond executed by the appellant shall stand discharged. Order and direction accordingly.

(C.K. BUCH, J.)

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